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REMARKS

Claims 1-20 and 68-79 are pending in the present application. In the Non-Final Office Action mailed March 18, 2008, claims 1-20 and 68-79 were rejected. In this response, claims 1, 6, 7, 9, 10, 16, 17, 68, 71, 74, and 77 are amended, and claims 3-5 are cancelled. Reconsideration of the present application as amended and in view of the remarks that follow is respectfully requested.

Claims 1-6, 10-15 and 19-20 stand rejected under 35 U.S.C. §103(a) as being unpatentable over U.S. Patent Publication No. 2004/0147928 to Landry et al. (hereafter "Landry") in view of U.S. Patent No. 6,517,565 to Whitman et al. (hereafter "Whitman"). Claims 7-9, 16-18 and 68-79 stand rejected under 35 USC §103(a) as being unpatentable over Landry in view of Whitman and further in view of U.S. Patent No. 6,440,133 to Beale (hereafter "Beale"). As an initial matter, Applicants reserve the right to remove Landry with an affidavit under 37 C.F.R. §1.131 in this and any continuing applications. However, assuming only *arguendo* that Landry may be asserted with respect to the present application, claims 1-2, 6-20 and 68-79 are patentable over its combination with Whitman and Beale.

Amended claim 1 recites, among other features, "a guide member including a connecting portion and a guiding portion, said connecting portion including: a body extending between a distal end and a proximal end; a connector extending distally from said distal end of said body, said connector including resiliently movable engagement portions extending outwardly therefrom in opposite directions from one another for releasably engaging said engagement portions within the bone anchor; said guiding portion extends proximally from said proximal end of said body; and said body is tapered from said distal end to said proximal end with said distal end sized to transition from the connector to the bone anchor for guiding the implant to the anchor...." Support for the amendment to claim 1 may be found, for example, at paragraphs [0018], [0019], [0021], [0038] and Figures 1-6, 9 and 10. Neither Landry nor Whitman include engagement portion as recited in claim 1, and therefore do not teach or suggest claim 1. Therefore, withdrawal of the rejection of claim 1 is respectfully requested.

Furthermore, Beale does not teach or suggest these features associated with the engagement portions of the connector of the connecting portion. Beale includes protrusions 94e,

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96e and 94f, 96f that extend toward one another to secure the anchor secured to the extension when the distal end of the extension is positioned around the receiver of the anchor. There is no teaching or suggestion of "said connector including resiliently movable engagement portions extending outwardly therefrom in opposite directions from one another for releasably engaging said engagement portions within the bone anchor..." as recited in claim 1. Therefore, claim 1 is allowable.

Claims 2 and 6-9 depend from claim 1 and are allowable at least for the reasons claim 1 is allowable and for other reasons. Claims 6 and 7 are amended to maintain consistency with amended claim 1 and further define features of the connector and engagement portions. Amended claim 9 recites "wherein said distal extensions are deflectable toward one another for insertion into the bone anchor and biased toward a pre-insertion orientation to facilitate said engagement portions engaging the bone anchor and said engagement portions each include a proximal end having a first height projecting from said respective distal extension and said engagement portions taper distally from said proximal end thereof to a distal end thereof having a second height less than said first height." Support for the amendment to claim 9 may be found, for example, at paragraph [0040] and Figure 9. The cited references fail to teach or suggest any engagement portions with the height tapering from a proximal end to a distal end as recited in claim 9. Withdrawal of the rejection of claims 2 and 6-9 depending from claim 1 is respectfully requested.

Amended claim 10 recites "a guide member including a connecting portion and a guiding portion, wherein with said connecting portion adjacent the bone anchor said guiding portion extends proximally from said connecting portion and is adapted to receive the implant, said connecting portion including a body comprising a tapered portion to transition between the anchor and said guiding portion, wherein said guiding portion is structured to move between a loose condition for receiving the implant and a taut condition while the implant is guided along said guiding portion to the bone anchor." Support for the amendment may be found, for example, in paragraph [0034] and Figs. 5-6.

Landry and Whitman lack any teaching or suggestion of a shaft and/or a guiding portion that includes a loose condition for receiving an implant and a taut condition while the implant is

guided to the bone anchor. Whitman describes steering wires 126, 140 which may be positioned between a taut and limp configuration to steer surgical attachments. See also e.g., Whitman, column 11, lines 32-39. Steering wires 126, 140 extend along a flexible shaft 122 and are coupled to the tip of flexible shaft 122. In this configuration, a user may rotate trackball 124 and initiate actuation of steering motors 130, thereby rotating pulleys 160 to pull on steering wires 126, 140 and correspondingly turn the tip of flexible shaft 122. See e.g., Whitman, column 11, lines 23-49; column 12, lines 55-61; and Figures 2a and 3. It is respectfully submitted that the steering wires are not disclosed or taught to receive an implant in a loose condition. Since steering wires 126, 140 are positioned within shaft 122, they are not structured or capable of receiving or guiding any implant. Moreover, Whitman also fails to disclose that shaft 122 is a guiding portion or that anything is guided therealong.

Accordingly, even if guide member 100 of Landry were modified as suggested by the Office Action, the combination lacks a guiding portion structured to move between a loose condition for receiving the implant and a taut condition while the implant is guided along the guiding portion to the bone anchor as recited in claim 10. Therefore, withdrawal of the rejection of claim 10 is respectfully requested.

Claims 11-20 depend from claim 10 and are allowable at least for the reasons claim 10 is allowable and for other reasons. For example, amended claim 16 recites "wherein said distal extensions each include an engagement portion extending therefrom in opposite directions from one another that are engageable with the bone anchor." Amended claim 17 recites "wherein said engagement portions each project laterally from said respective distal extension and said engagement portions each include a proximal end having a first height projecting from said respective distal extension and said engagement portions taper distally from said proximal end thereof to a distal end thereof having a second height less than said first height." Support for the amendments may be found, for example, in paragraphs [0038]-[0040] and Figures 9-10. As discussed above with respect to claims 1 and 9, the cited references fail to teach or suggest these features in claims 16 and 17. Withdrawal of the rejection 11-20 depending from claim 10 is respectfully requested.

Amended claim 68 recites, among other features, "...said distal extensions are resiliently movable relative to said body and each includes an engagement portion extending therefrom releasably engageable within the bone anchor, wherein said engagement portions extend outwardly from said distal extensions in opposite directions from one another." Support for the amendment may be found for example, in paragraphs [0038]-[0040] and Figures 9 and 10. As discussed above with respect to claim 1, the cited references fail to teach or suggest the distal extensions having the engagement portions configured in the manner recited in claim 68, and withdrawal of the rejection of claim 68 is respectfully requested.

Claims 69-73 depend from claim 68 and are allowable at least for the reasons claim 68 is allowable and for other reasons. For example, claim 71 is amended like claim 9 above and is likewise independently allowable. Withdrawal of the rejection of claims 69-73 is respectfully requested.

Amended claim 74 recites, among other features, "said distal extensions are resiliently movable relative to said body and each includes an engagement portion extending therefrom releasably engageable within the bone anchor, wherein said engagement portions extend outwardly from said distal extensions in opposite directions from one another." Support for the amendment may be found for example, in paragraphs [0038]-[0040] and Figures 9 and 10. As discussed above with respect to claim 1, the cited references fail to teach or suggest the distal extensions having the engagement portions configured in the manner recited in claim 74, and withdrawal of the rejection of claim 74 is respectfully requested.

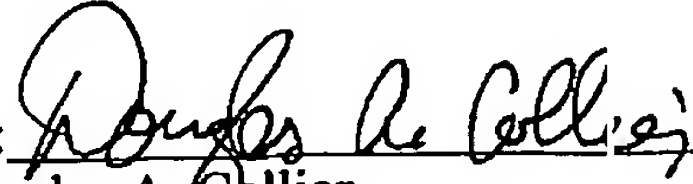
Claims 75-79 depend from claim 74 and are allowable at least for the reasons claim 68 is allowable and for other reasons. For example, claim 77 is amended like claim 9 above and is likewise independently allowable. Withdrawal of the rejection of claims 75-79 is respectfully requested.

In view of the foregoing remarks, it is respectfully submitted that the Applicant's application is in condition for allowance with pending claims 1-3, 6-20 and 68-79. Reconsideration of the subject application is respectfully requested. Timely action towards a Notice of Allowability is hereby solicited.

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The Examiner is encouraged to contact the undersigned by telephone to resolve any outstanding matters concerning the subject application.

Respectfully submitted,

By: 
Douglas A. Collier
Reg. No. 43,556
Krieg DeVault LLP
One Indiana Square, Suite 2800
Indianapolis, Indiana 46204-2079
(317) 238-6333 voice

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